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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CHRISTOPHER LEON SMITH,

10 Plaintiff,

Case No. C15-0852-RSM-MAT

11 v.

12 JANE OSTRUM, R.N.,

Defendant.

REPORT AND RECOMMENDATION

13
14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff Christopher
16 Smith has been granted leave to proceed with this action *in forma pauperis*. Service has not been
17 ordered. This Court, having reviewed plaintiff's amended complaint, and the balance of the
18 record, concludes that plaintiff has failed to state a cognizable ground for relief in this action.
19 This Court therefore recommends that plaintiff's amended complaint and this action be
20 dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

21 DISCUSSION

22 On May 28, 2015, plaintiff presented to this Court for filing a civil rights complaint in
23 which he alleged that a nurse at the Monroe Correctional Complex-Intensive Management Unit

1 ("MCC-IMU") improperly mixed regular insulin and long term insulin together in a single
2 syringe and injected plaintiff with this mixture causing plaintiff to suffer a "low blood sugar
3 attack." (Dkt. 8 at 3.) Plaintiff, who is an insulin-dependent diabetic, asserted that the nurse's
4 action constituted deliberate indifference and that she had had to be retrained as a result of this
5 error. (*Id.*) Plaintiff identified MCC-IMU nurse Jane Ostrum, R.N., as the lone defendant in this
6 action. (*Id.*)

7 After reviewing plaintiff's complaint, this Court concluded that plaintiff had not
8 adequately alleged any violation of his constitutional rights against Nurse Ostrum. Thus, on June
9 16, 2015, the Court issued an Order declining to serve plaintiff's complaint and granting him
10 leave to file an amended complaint. (Dkt. 9.) The Court noted in its Order declining to serve
11 plaintiff's complaint that the claim asserted against Nurse Ostrum implicated Eighth Amendment
12 concerns. The Court then set forth the standard which must be met in order to establish an
13 Eighth Amendment violation and explained to plaintiff why his claim against Nurse Ostrum was
14 deficient. The Court advised plaintiff as follows:

15 The Eighth Amendment imposes a duty upon prison officials to provide humane
16 conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). This
17 duty includes ensuring that inmates receive adequate food, clothing, shelter, and
18 medical care, and taking reasonable measures to guarantee the safety of inmates.
Id. In order to establish an Eighth Amendment violation, a prisoner must satisfy a
19 two-part test containing both an objective and a subjective component. The
Eighth Amendment standard requires proof that (1) the alleged wrongdoing was
objectively "harmful enough" to establish a constitutional violation; and (2) the
prison official acted with a sufficiently culpable state of mind. *Farmer v.*
Brennan, 511 U.S. at 834.

20 The objective component of an Eighth Amendment claim is "contextual
21 and responsive to 'contemporary standards of decency.'" *Hudson v. McMillian*,
503 U.S. 1, 8 (1992)(quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). The
22 state of mind requirement under the subjective component of the Eighth
Amendment standard has been defined as "deliberate indifference" to an inmate's
23 health or safety. *Farmer v. Brennan*, 511 U.S. at 834. Under the "deliberate

1 "indifference" standard, a prison official cannot be found liable for denying an
 2 inmate humane conditions of confinement unless the official knows of and
 3 disregards an excessive risk to inmate health or safety. *Id.* at 837.

4 Deliberate indifference is "a state of mind more blameworthy than
 5 negligence" and "requires 'more than ordinary lack of due care for the prisoner's
 6 interests or safety.' " *Id.* at 835 (quoting *Whitley v. Albers*, 475 U.S. 312, 319
 7 (1986)). The Ninth Circuit has explained that "[p]rison officials are deliberately
 8 indifferent to a prisoner's serious medical needs when they deny, delay, or
 9 intentionally interfere with medical treatment." *Hallett v. Morgan*, 296 F.3d 732,
 10 744 (9th Cir. 2002) (internal quotation marks omitted).

11 While plaintiff asserts in his complaint that Nurse Ostrum was deliberately
 12 indifferent to his medical needs, the facts alleged by plaintiff do not support this
 13 assertion. It appears clear from the face of the complaint, and from the materials
 14 submitted by plaintiff with his complaint, that an error was made in the
 15 administration of plaintiff's insulin on a single date in February 2015, and that
 16 additional training was provided to the nurse who made the error. These facts
 17 suggest, at most, that the nurse was negligent in the way she administered the
 18 insulin, they in no way suggest that the nurse knew of, and disregarded, a known
 19 risk to plaintiff's health or safety. In addition, the facts set forth by plaintiff in his
 20 complaint do not demonstrate that the nurse's alleged error was objectively
 21 " harmful enough" to implicate Eighth Amendment concerns. Thus, at this
 22 juncture, plaintiff has not adequately alleged any violation of his constitutional
 23 rights against the named defendant.

14 (Dkt. 9 at 2-3.)

15 On June 24, 2015, plaintiff submitted an amended complaint to the Court for filing. (Dkt.
 16 10.) A review of plaintiff's amended pleading reveals that it contains the same deficiencies as
 17 did his original pleading in this case. Plaintiff alleges that Nurse Ostrum was negligent in
 18 mixing regular insulin and long lasting insulin together, and then administering the insulin
 19 mixture to plaintiff on a single date in February 2015. (*Id.* at 3.) Plaintiff contends that as a
 20 result of this negligence, he suffered low blood sugar so severe that Nurse Ostrum had to be
 21 retrained and a notice was put on the insulin cart stating that the two types of insulin were not to
 22 be mixed. (*Id.*)

23 Plaintiff does not allege in his amended pleading that Nurse Ostrum was deliberately

1 indifferent to a serious medical need and the facts alleged by plaintiff in his amended pleading
2 suggest no more than that Nurse Ostrum was negligent in the way she prepared and administered
3 plaintiff's insulin on the day in question. The facts alleged by plaintiff in his amended pleading
4 also fail to demonstrate that Nurse Ostrum's error was objectively "harmful enough" to implicate
5 Eighth Amendment concerns. Thus, plaintiff fails to adequately allege any violation of his
6 federal constitutional rights against Nurse Ostrum in his amended complaint.

CONCLUSION

8 As plaintiff has not adequately stated any claim upon which relief may be granted in his
9 amended complaint, this Court recommends that plaintiff's amended complaint and this action
10 be dismissed without prejudice, prior to service, under § 1915(e)(2)(B)(ii). A proposed order
11 accompanies this Report and Recommendation.

DEADLINE FOR OBJECTIONS

13 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
14 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
15 and Recommendation is signed. Failure to file objections within the specified time may affect
16 your right to appeal. Objections should be noted for consideration on the District Judge's
17 motions calendar for the third Friday after they are filed. Responses to objections may be filed
18 within **fourteen (14) days** after service of objections. If no timely objections are filed, the
19 matter will be ready for consideration by the District Judge on **August 14, 2015**.

20 DATED this 22nd day of July, 2015.



Mary Alice Theiler
United States Magistrate Judge